REMARKS

In the Office Action[1], the Examiner:

rejected claims 1-4, 7, 18, 19, 23-29, 37-43, 45, and 53 under 35 U.S.C. § 103(a) as unpatentable over U.S. Publication No. 2003/0126048 to Hollar et al ("Hollar") in view of U.S. Publication No. 2003/0033242 to Lynch et al. ("Lynch");

rejected claims 5, 6, 11-13, 10-22, 29, 30, 32-34, 44, and 48-50 under 35 U.S.C. § 103(a) as unpatentable over Hollar and Lynch in further view of U.S. Publication No. 2001/0029475 to Boicourt et al. ("Boicourt");

rejected claims 8-10, 14, 31, 46, and 47 under 35 U.S.C. § 103(a) as unpatentable over Hollar and Lynch in view of U.S. Publication No. 2001/0034628 to Eder ("Eder");

rejected claims 15, 35, and 51 under 35 U.S.C. § 103(a) as unpatentable over Hollar and Lynch in view of "HBJ Financial Accounting" by Kochanek ("Kochanek");

rejected claims 16, 36, and 52 under 35 U.S.C. § 103(a) as unpatentable over Hollar and Lynch in view of U.S. Patent No. 5,621,201 to Langhans et al. ("Langhans"); and

rejected claim 17 under 35 U.S.C. § 103(a) as unpatentable over Hollar and Lynch in view of U.S. Publication No. 2002/0091597 to Teng ("Teng").

Claims 1-13 and 15-53 are pending.

Applicant respectfully traverses the rejection of claims 1-4, 7, 18, 19, 23-29, 37-43, 45, and 53 under 35 U.S.C. § 103(a). A *prima facie* case of obviousness has not been established with respect to these claims.

[1] The Office Action may contain statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. *See M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007).* "A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention." *M.P.E.P. § 2145.* Furthermore, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" at the time the invention was made. *M.P.E.P. § 2143.01(III), internal citation omitted.* Moreover, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." *M.P.E.P. § 2141.02(I),* internal citations omitted (emphasis in original).

"[T]he framework for objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q 459 (1966).... The factual inquiries ... [include determining the scope and content of the prior art and] ... [a]scertaining the differences between the claimed invention and the prior art." *M.P.E.P. § 2141(II).* "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." *M.P.E.P. § 2141(III).*

Independent claim 1 recites, among other elements, a "partial amount representation including an amount value that is posted to an account on a periodic

schedule, the periodic schedule being determined by the calculation rule representation." The Office Action correctly recognizes that Hollar does not disclose or suggest this feature of claim 1. Office Action p. 4. The Office Action does allege, however, that "Lynch discloses [a] system and method for automated process of deal structuring having the partial amount representation including an amount value that is posted to an account on a periodic schedule, the periodic schedule being determined by the calculation rule representation (Paragraph 124-147 teaches calculating monthly payment rate using the total loan amount and rate and time information)." Office Action p. 4. This allegation is not correct.

Lynch discloses a system in which "additional upsell loans may . . . be generated. An exemplary difference between this option and other loan options previously discussed may be that the negative amount calculated from the first loan is not used to determine the size of the second loan, but rather is used only to ensure that the preferred debt pay-offs and cash-out are within allowable limits." Lynch paragraph [0124]. Lynch further discloses that "constraints may be placed on portions of the DSS [deal structure system]. For example, although the loan terms for the two loans may be different, the loan term for the second loan should not exceed the loan term for the first loan." Lynch paragraph [0136]. Lynch also discloses that "[a]fter the customer, or the CSR, has selected which of the options in a deal is desired, the selected deal may be committed and submitted in the MSS (mortgage software system) and, documentation requirements are preferably provided and a closing date scheduled." Lynch paragraph [0137]. Finally, Lynch discloses "if the customer had ten years remaining at $800 a month, and the reduced term offer would be for five years at $1500 a month, the client

would save $6,000. This is calculated as ($800*120 months)-($1500*60 months)." Lynch paragraph [0138].

While it is not entirely clear from the Office Action, it appears that the Examiner is alleging that the "total loan amount" in Lynch constitutes the claimed "amount value," the "monthly payment rate" in Lynch constitutes the claimed "partial amount representation," the "rate and time information" constitutes the claimed "periodic schedule," and the calculation in paragraph [0138] of Lynch constitutes the claimed "calculation rule representation." Office Action p. 4. Applicant cannot discern from the Office Action what disclosure in Lynch allegedly constitutes the claimed "account." Notwithstanding, however, each of these allegations is not correct.

First, there is no disclosure in Lynch of an "amount value that is posted to an account" at least because there is no disclosure or suggestion of an "account" in Lynch. Lynch is directed to **structuring loans**. *See* Lynch paragraph [0136]. There is nothing in Lynch that can reasonably be said to discloses or suggest an account to which the amount of a loan is "posted." Thus, Lynch does not remedy the deficiencies of Hollar. Inasmuch as the Office Action has failed to demonstrate evidence of an "amount value that is posted to an account" in Lynch, a *prima facie* case of evidence has not been established. The rejection should be withdrawn for at least this reason.

Second, nothing in Lynch discloses or suggests a "periodic schedule" for which an "amount value is posted to an account." As mentioned above, the Office Action seemingly alleges that the "rate and time information" in Lynch constitutes the claimed "periodic schedule." The "rate and time information" in Lynch appears to be a "monthly" payment on a loan. *See* Lynch paragraph [0138]. But, a "monthly" payment on a loan

cannot constitute the claimed "amount value that is posted to an account on a periodic schedule." Even if it is assumed that a "monthly" payment is a "periodic schedule," which Applicant does not concede, a "monthly" **payment** is not an "**amount value**" that is "posted to an account on a periodic schedule." Indeed, not only is there no disclosure or suggestion of an "account," or a "post[ing], but there is also no disclosure of an "**amount value** that is posted on a periodic schedule."

As discussed above, the Office Action seems to allege that the "total loan amount" constitutes the claimed "amount value." *See* Office Action p. 4. But, there is no disclosure or suggestion in Lynch that a "monthly" payment is for the "total loan amount." Indeed, this allegation in the Office Action contradicts the recitations of the claims.

For example, the Office Action must either admit that the "total loan amount" cannot constitute the claimed "amount value" because it cannot constitute both the claimed "total amount" and the "amount value" or, alternatively, that the "monthly" payment is not periodic because if a payment of the "total loan amount" is paid in one month. The payment cannot be "monthly" since there would be no outstanding balance on the "total loan amount" to pay in a following month when the "total loan amount" has been paid in the previous month. Thus, a "monthly payment" cannot logically constitute the claimed "amount value that is posted to an account on periodic schedule." Inasmuch as Lynch does not disclose or suggest this feature of claim 1, Lynch does not remedy the deficiencies of Hollar. Thus, for at least this reason, a *prima facie* case of obviousness has not been established with respect to claim 1 and the rejection of claim 1 should be withdrawn.

Notwithstanding the above discussion, claim 1 is allowable for at least the following separate and distinct reason. Claim 1 recites a "calculation rule representation" and a "partial amount representation." The Office Action alleges that the same feature of "calculating a monthly payment rate" in Lynch constitutes both the claimed "calculation rule representation" and the claimed "partial amount representation." Office Action p. 4. But, this allegation is not correct.

Specifically, the Office Action alleges ". . . [a] periodic schedule being determined by the calculation rule representation (Paragraph 124-147 teaches calculating monthly payment rate using the total amount and rate and time information); and the partial amount representation received by the posting module (Paragraph 124-147 teaches calculating monthly payment rate using the total amount and rate and time information)." Office Action p. 4.

In other words, the Office Action is alleging that the "calculating monthly payment rate using the total amount and rate and time information" allegedly taught in paragraphs [0124]-[0147] of Lynch constitutes not only the claimed "calculation rule representation" but also the claimed "partial amount representation." But, claim 1 recites that "a total amount and a calculation rule representation from the application [are used] to calculate a partial amount representation." Thus, the "calculation rule representation" and the "partial amount representation" cannot be identical representations at least because the "partial amount representation" is calculated using the "total amount" and the "calculation rule representation." Thus, for at least this reason, the Office Action has failed to clearly articulate a reason why Lynch allegedly discloses this feature of claim 1. Inasmuch as Lynch does not disclose the claimed

"partial amount representation" or the claimed "calculation rule representation, a *prima facie* case of obviousness has not been established with respect to claim 1. The rejection should be withdrawn.

Finally, and notwithstanding the above discussion, claim 1 is allowable for at least the following additional separate and distinct reason. Claim 1 recites a "receiving the partial amount representation to provide a modifying instruction, the modifying instruction being based on the partial amount representation." The Office Action acknowledges that "Hollar is silent regarding . . . the modifying instruction being based on the partial amount representation received by the posting module." Office Action p. 4. But, the Office Action **does not even allege** that Lynch remedies the deficiency of Hollar. The Office Action only states that "Hollar is silent" with respect to this feature of the claims. *Id*. The remainder of the Office Action does not address this feature of claim 1.

Applicant asserts that Lynch does not disclose or suggest this feature not only because Lynch does not disclose or suggest a "modifying instruction," but also because Lynch does not disclose or suggest a "modifying instruction" that is "based on the partial amount representation." Therefore, because the Office Action has not only failed to show this feature of claim 1 in Lynch, but has also failed to even allege that Lynch teaches or suggests this feature, a *prima facie* case of obviousness has not been established. Lynch does not remedy the acknowledged deficiency of Hollar. Therefore, the rejection should be withdrawn. In the event that the Examiner feels that Lynch does remedy the deficiency of Hollar, Applicant respectfully requests that the next action, if

not an allowance, be a non-final Office Action and include specific citations to features in Lynch that allegedly correspond to the recitations of the claims.

For at least the above reasons, independent claim 1 is allowable over Hollar and Lynch whether taken alone or in combination. Timely allowance of claim 1 is therefore requested. Claims 2-4, 7, 18, 19, and 23-24 are allowable for at least the reason that they depend from allowable claim 1.

Independent claims 25, 39, and 40, although of a different scope, include recitations similar to those discussed above in relation to independent claim 1 and are not anticipated or even suggested by Hollar and Lynch for reasons similar to those discussed above with respect to claim 1. Claims 26-29, 37, 38, 41-43, 45, and 53 are allowable for at least the reason that they depend from the allowable independent claims. Therefore, the Examiner should withdraw the rejection of claims 1-4, 7, 18, 19, 23-29, 37-43, 45, and 53 under 35 U.S.C. § 102(e) and allow these claims.

Applicant respectfully traverses the rejections of remaining dependent claims 5, 6, 8-13, 15-22, 29-36, 44, and 46-52 under 35 U.S.C. § 103(a) as unpatentable over Hollar and Lynch in view of one or more of Boicourt, Eder, Kochanek, Langhans, and Teng.

None of Boicourt, Eder, Kochanek, Langhans, and Teng remedy the deficiencies of the Hollar and Lynch, as discussed above. Inasmuch as claims 5, 6, 8-13, 15-22, 29-36, 44, and 46-52 all depend from one of the above-discussed independent claims, these dependent claims are allowable for at least the same reasons as the independent claims. Thus the rejections of these dependent claims under 35 U.S.C. § 103(a) should be withdrawn and these claims should be allowed.

CONCLUSION

In view of the foregoing, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 9, 2009

By: _____
Travis R. Banta
Reg. No. 60,498